

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION
COMMITTEE ON STATE ADMINISTRATION**

Call to Order: By **CHAIRMAN MACK COLE**, on January 11, 1999 at
10:00 A.M., in Room 331 Capitol.

ROLL CALL

Members Present:

Sen. Mack Cole, Chairman (R)
Sen. Don Hargrove, Vice Chairman (R)
Sen. Jon Tester (D)
Sen. Jack Wells (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Mary Morris, Committee Secretary
David Niss, Legislative Branch

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 148 SB12
Executive Action: SB 120

HEARING ON SB 148

Sponsor: SEN. BOB DEPRATU, SD 40, WHITEFISH

Proponents: Greg Hahn, Right of Way Supervisor, Montana
Department of Transportation
Tim Reardon, Chief Council, Montana Department of
Transportation

Opponents: John Blomquist, Montana Stock Growers Association

Opening Statement by Sponsor:

SEN. DEPRATU reported that this bill was requested by the Department of Transportation and is an effort to revive language pertaining to the Department of Transportation's excess land sales. It raises the value of appraisal requirements to match current standards in other areas of the law, thus expediting the land sales process and bringing it to current operating standards. The impact of this bill, if passed, will be to increase excess land sales the department is able to process in a given period, thus raising revenues, allowing the department to sell mitigated wet lands without losing credits it acquired, and streamline the process for the department making it more public accommodating.

Proponents' Testimony:

Greg Hahn, Right of Way Supervisor, Montana Department of Transportation, read written testimony, attached as **EXHIBIT (sts07a01)**.

{Tape : 1; Side : A; Approx. Time Counter : 0 - 7}

Tim Reardon, Chief Council, Montana Department of Transportation, pointed out that the department would still be required to obtain fair market value for that property, including land exchanges with local governments and other governmental agencies, as well as direct sales. He advised that this bill is the result of a number of inquiries from local entities about acquiring old maintenance sights. As the department has expanded its maintenance fleet, it has been able to spread out and be more efficient. Also, a lot of communities have expanded so that old sanding houses or maintenance sites are closer to the center of town, and these sites are becoming more and more available as surplus. Local governments have asked if the department can exchange those facilities, and they are willing to pay fair market value. If a small community is forced to go to public auction, particularly in certain situations such as desirable recreation areas, they are probably not going to be able to compete for the property. The department will still retain, in some instances, clean-up value.

Mr. Reardon informed the committee that, several years ago, a similar wetland proposal was presented but did not pass. This issue is being reintroduced because various conservation groups have expressed an interest in acquiring this property, maintaining the restrictive covenants. This is important to the department because they are required by federal law to mitigate any wetland destroyed in the process of highway work, and the

investment in wetland mitigation is substantial. If they are unable to put the easement on, the property probably would not be disposed of and would stay in the state inventory. He noted that, if it is sold without the easement, they would have to mitigate it somewhere else, and make the investment again, adding that not every wetland area deemed excess would be a desirable acquisition.

{Tape : 1; Side : A; Approx. Time Counter : 7 - 11}

Opponents' Testimony:

John Blomquist, Montana Stock Growers Association, stated that their concern is elimination of a provision of the law allowing the original landowner, or their successor, to have the opportunity to reacquire the property, pointing out that, if that provision is eliminated, there could be more fragmented land ownership. He added that they do not have a problem with the provisions in Section 5 of the bill.

Questions from the Committee and responses:

SEN. WELLS asked **Mr. Hahn** to explain how the department acquires the land. **Mr. Hahn** explained that property is acquired for maintenance sites or gravel pits, but mainly for right-of-way purposes, and that they are required by law to purchase any uneconomical remnants. Most of those lands called excess are parcels which were uneconomical to the original landowner, and which the department no longer requires for highway purposes.

SEN. WELLS asked **Mr. Hahn** to give an estimate of how many parcels become excess in a year's time. **Mr. Hahn** responded that they maintain an inventory of 370 tracts state-wide which are excess to the department's needs, but it is difficult to estimate on an annual basis. A number of these tracts have been offered for sale, but did not sell. Some have been on the books for quite a few years but there is no use for them. The wetlands portion of this bill could help address some of those tracts because they are beneficial to farming operations.

Mr. Hahn pointed out that they are not trying to restrict the original landowner's ability to reacquire the property, that their intent is to strike the language requiring them to notify the successor(s) in interest, adding that public auctions are advertised and they could reacquire the property at auction. Determining the successor in interest is a complicated process, and the department only wishes to eliminate the requirement to notify every successor in interest that may exist on the property.

SEN. WELLS pointed out that, if the department is able to sell or transfer property without having an auction, such as to another government entity, without notification, the previous owner would be out of the picture so far as the opportunity to reacquire that property through the auction process. **Mr. Hahn** responded that would only be true, currently, of property worth under \$2,500 but, if this bill passes, that value would be raised to \$5,000. He added that, if the value of the property is over \$5,000, it has to be sold at public auction. He admitted that, if the property is traded to another public agency, it would eliminate the opportunity for the previous owner to reacquire the property, noting that, in 1995, the law was changed so that the department does not have to notify the successors in interest if the property is either sold or auctioned. He pointed out that this bill will only eliminate notifying the successor in interest if the department wishes to trade the property.

{Tape : 1; Side : A; Approx. Time Counter : 11 - 21}

SEN. HARGROVE noted that it appears there is a specific intent to cut the competition between the public and the state on acquisition of these lands, and asked **Mr. Hahn** if that is the case. **Mr. Hahn** stated that they are requesting a change in the language so they can sell property directly to other government agencies, pointing out that they must still get fair market value for the property. He explained that they are eliminating the public's ability to outbid government agencies at public auction since most government agencies, such as school districts and rural fire departments, have a limited budget and strict requirements for acquisition of property. This will allow the department to work with those agencies, while still receiving fair market value, although they would lose any profit that might be acquired at a public auction.

SEN. HARGROVE indicated the he thought the purpose of the current language was to give a landowner the opportunity to reacquire property if it was no longer needed by the department, and that this is a legitimate reason for the law. He asked **Mr. Hahn** if that would be hard for them to do. **Mr. Hahn** responded that this is the difficulty, and the reason for the bill. It is very difficult to readdress the successor in interest in a piece of property. He reported that it is currently department policy to notify adjacent landowners prior to disposal of a parcel of property, adding that approximately 90% of these parcels are surrounded by a single landowner. **SEN. HARGROVE** asked what would happen if a government entity does not come up with fair market value. **Mr. Hahn** said that it would then be offered for sale, according to the rules regarding value of the parcel. **SEN. HARGROVE** asked if the department can currently exchange property

with another government entity, and **Mr. Hahn** answered no, that a school district has a right to request adjacent property, but the department does not have the right to exchange property with any public or private agencies.

{Tape : 1; Side : A; Approx. Time Counter : 21 - 26}

SEN. TESTER asked how the fair market value is determined. **Mr. Hahn** explained that currently, on property valued over \$2500, an appraisal is conducted which meets the standards set forth by the appraisal board for the State of Montana and, in today's market, those appraisals cost between \$500 and \$10,000. The department is requesting the language be changed so that property valued under \$5,000, instead of under \$2500, will not have to be appraised, as the department conducts a limited appraisal process on properties valued under that amount.

SEN. TESTER asked if real property was traded for real property, or if they were trading money for property. **Mr. Hahn** responded that it is real property traded for real property. He added that there is no current requirement in state law for the department to either request or offer additional funds to make the trade more equal in value.

SEN. TESTER asked, of those 370 tracts the department currently has in their inventory which were offered for sale this past year, how many did they not receive any bids on. **Mr. Hahn** answered that the department has identified 370 tracts over approximately the past 30 years, probably 90% of which have been offered to sale but did not sell. **SEN. TESTER** asked why they did not sell, and **Mr. Hahn** responded that they are probably unusable to the adjacent landowner.

SEN. TESTER referred to page 2, line 14 of the bill, which addresses sections 1 and 2, and asked **Mr. Reardon** if there was a third section originally. **Mr. Reardon** indicated that he does not believe there was a section 3, but that he would research it.

SEN. TESTER read the language in Section 3 on page 2 of **EXHIBIT(1)** "The current law refers to MCA 77-2-322 which requires that subparts (1), (2) and (3) be followed". **Mr. Hahn** said that he did not think there was a subpart (3), that he believed it was an error. **Mr. Reardon** stated that there is a subsection 3 which reads "the notice shall give the terms and conditions of the sale, and any additional information the department considers useful.", adding that this should be in there. **SEN. TESTER** pointed out that, the way it was written, this was eliminated, and then clarified that it should be left in. **Mr. Reardon** confirmed that language should remain in the bill.

SEN. TESTER then asked what the difference is between the terms "shall" and "must". **Mr. Reardon** answered that the Legislative Council has made the decision to strike "shall" and replace it with "must" to make it more significant.

{Tape : 1; Side : A; Approx. Time Counter : 26 - 32}

SEN. HARGROVE asked **Mr. Blomquist** if the department's policy to notify adjacent landowners would address his concerns. **Mr. Blomquist** said that it would. **SEN. HARGROVE** further asked if he is comfortable with this being department policy as adverse to being in statute, and **Mr. Blomquist** responded that, as an attorney, he would like to see it in statute.

SEN. WELLS recognized **Mr. Reardon**. **Mr. Reardon** offered clarification regarding the exchange of property. The department currently exchanges lands with local governments, but this amendment would allow them to sell it directly. In an exchange, current law allows the department to set the terms and conditions of that sale, which ordinarily involves a local government owning or acquiring certain property which they will then exchange with the department. **Mr. Reardon** further clarified that the department does not condemn property that creates an excess. The department can only condemn that portion of land necessary for the right-of-way for a road. The tracts being referred to in this bill are acquired, in nearly every instance, through purchase. The department may be forced to pay for the uneconomic remnant, and that is how it is acquired through condemnation.

CHAIRMAN COLE asked **Mr. Blomquist**, if it was in statute rather than department policy that the adjacent landowners would be notified, would that answer his question. **Mr. Blomquist** responded that would be sufficient for part of their concerns. He indicated that fragmentation of landownership is a difficult issue, and giving adjoining landowners an opportunity to reacquire some of this property could avoid some of these problems. He referred to other bills currently in the House regarding private condemnation for tracts without access.

CHAIRMAN COLE indicated that the amendments to this bill came from the Department of Transportation in 1995, and **Mr. Reardon** confirmed, adding that the department dropped the ball on the exchange issue. **CHAIRMAN COLE** asked if **Mr. Reardon** had any figures on the number of tracts that have been for sale over the past 2 years. **Mr. Reardon** deferred the question to **Mr. Hahn**, who indicated it was something under 30. **CHAIRMAN COLE** further asked how many were purchased by adjacent landowners and **Mr. Hahn** responded that he would say 80% of them. **Mr. Reardon** noted that

only 2 were acquired by public agencies, and **Mr. Hahn** added that often these are very small tracts, usually under an acre and unbuildable and undevelopable. They are sold to the adjacent landowner because no other buyer could get through a subdivision review process to build on them. Raising the limit to \$5,000 would further streamline this process so that the department could instigate the sale of those small, uneconomical parcels to the adjacent landowner. **CHAIRMAN COLE** commented that, if the bill included a requirement to notify adjacent landowners, it would be a bill everyone could live with.

{Tape : 1; Side : A; Approx. Time Counter : 32 - 42}

Closing Statements by the Sponsor:

SEN. DEPRATU indicated that a state gravel pit in Whitefish and a maintenance site in Columbia Falls are each within their respective city's business districts, where previously they were quite a way out of the business district. He gave the example of a parcel, approximately 5 acres, situated between these two cities whose owner is willing to sell to the city of Whitefish. The City of Whitefish would then like to exchange that parcel for the gravel pit, which would be developed into a business industrial park. He pointed out the state could develop this 5-acre parcel into a maintenance site to replace the 2 older, inadequate sites located east and west, that the old sites could be sold for commercial development thereby increasing tax revenues, and this would have a very positive benefit for everybody concerned.

{End of Tape : 1; Side : A; Approx. Time Counter : 42 - 45}

HEARING ON SB 120

Sponsor: **SEN. BARTLETT, SD 27, HELENA**

Proponents: **Joyce Brown, Chief, Employee Benefits Bureau,
Department of Administration.**

Opponents: **None**

Opening Statements by Sponsor:

SEN. BARTLETT reported that the Department of Administration requested this bill as a result of their discussions with the Legislative Audit Division during their fiscal year 1997 financial compliance audit. The bill deals with flexible spending accounts currently offered as an option within the

State's group benefits plan, which enables employees to use pre-tax dollars to pay for child care or out-of-pocket medical costs.

SEN. BARTLETT explained that SB 120 adds a definition of flexible spending accounts to state law, authorizes the department to retain any interest earned in the state's self insurance reserve fund, and specifies that interest retained, as well as any unused funds in the flexible spending accounts, must be used for the purposes specified on page 3, lines 5-8 of the bill. She pointed out that, without this bill, interest earned must be deposited in the General Fund and unused contributions in flexible spending accounts may also end up in the General Fund. The intent of this bill is to see that those funds stay in the state's self-insurance reserve and are used for group benefit purposes.

{Tape : 1; Side : B; Approx. Time Counter : 45 - 48}

Proponent's Testimony:

Joyce Brown, Chief, Employee Benefits Bureau, Department of Administration, confirmed that this bill was a result of the financial compliance audit, and explained that it allows the department to return to the practice of accounting for these funds, which are proprietary funds in a proprietary account, and to credit the interest on those funds to that proprietary account, rather than having them revert to the General Fund. She pointed out that this is a very small amount of money, that the annual interest earnings on those accounts is only about \$3,600 and the reversions at the end of the year are a little over \$1,000. **Ms. Brown** stated that this is a benefit account and should be treated like other benefits accounts.

Questions by the Committee:

SEN. HARGROVE asked if there is a fiscal cost for administration of this function. **Ms. Brown** responded no, that these are very small numbers.

SEN. TESTER asked **Ms. Brown** if the \$1,000 she referred to in testimony was the unclaimed amount. **Ms. Brown** responded yes, that it is between \$1,000 and \$2,000 a year, and it varies from year to year.

CHAIRMAN COLE asked **Ms. Brown** to confirm that this money previously was retained in the system, but now reverts to the General Fund. **Ms. Brown** confirmed that is correct. She stated that it was their understanding 2-18-812 MCA authorized these funds to be accounted for in the insurance reserve fund. She indicated that the Legislative Audit Department will probably

still maintain it, that this is probably still true for the medical flexible spending accounts which operates like an insurance fund because there is risk associated with it. The problem is with the dependent care flexible spending account because the monies only flow through that account, that they can only pay out the monies that are actually in the account and it does not operate like the insurance account.

Closing Statement By sponsor:

SEN. BARTLETT indicated that, since this is employee salary dollars, or employer contributions toward health insurance costs, it makes sense to retain the interest in that insurance self-reserve and make sure any excess not used by employees in these accounts also goes to that general purpose fund.

{Tape : 1; Side : B; Approx. Time Counter : 48 - 53}

EXECUTIVE ACTION ON SB 120

Motion/Vote: **SEN. WILSON's motion that SB 120 DO PASS passed unanimously.**

COMMITTEE BUSINESS

CHAIRMAN COLE announced that the House State Administration Committee will not hold a joint hearing on HB 79, as previously planned, but that **CHAIRMAN BRAINARD** has invited members of this committee who might be interested to attend their hearings on Tuesday, Wednesday and Thursday.

Mr. Niss pointed out that this bill would create a defined contribution system as an option to current PERS members, that the current PERS retirement plan is a defined benefit system, and he explained the differences between the two systems. He then indicated that it was initially thought that a joint meeting should be held due to the anticipated interest in this bill. During the interim, this issue received a lot of attention from state employees, partially because of a misunderstanding that the defined contribution system would be mandatory for PERS members. **Mr. Niss** indicated that this misunderstanding was explained and that perhaps most of their other concerns were addressed in the MetNET conferences held during the interim.

ADJOURNMENT

Adjournment: 11:00 A.M.

SEN. MACK COLE, Chairman

MARY MORRIS, Secretary

MC/MM

EXHIBIT (sts07aad)